

Remarks

Reconsideration of this Application is respectfully requested.

Upon entry of the foregoing amendment, claims 1-21 and 24-34 are pending in the application, with claims 1 and 24 being the independent claims. Claims 2, 3, 9, 13, 14, 18, 25, 26, 28, and 31 are sought to be amended. These changes should be entered after final as they address matters of form, raise no new issues, and pose no new search requirement by the Examiner. Applicants believe these changes do not change the scope of the claims, and are only made to clarify the features already recited in the claims. These changes are believed to introduce no new matter, and their entry is respectfully requested.

The claims presented in this Application should be interpreted solely based on the file history of this Application, not the file history of any predecessor or related application. With respect to this application, Applicants hereby rescind any and all disclaimers of claim scope made in any parent application(s), any predecessor application(s), and any related application(s). The Examiner is advised that any previous disclaimer of claim scope, if any, and any references that allegedly caused any previous disclaimer of claim scope, may need to be revisited. Nor should any previous disclaimer of claim scope, if any, in this Application be read back into any predecessor or related application.

Based on the above amendment and the following remarks, Applicants respectfully request that the Examiner reconsider all outstanding objections and rejections and that they be withdrawn.

Rejections under 35 U.S.C. § 103

Claims 1-9, 11, 12, 24, 25, and 27-30

Claims 1-9, 11, 12, 24, 25, and 27-30 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over the United States Patent No. 6,650,658 to Mueller et al. ("Mueller") in view of United States Patent Publication No. 2003/-128669 to Lacey, III ("Lacey"), ITU-T Recommendation G.992.3 ("G.992 Specification"), and United States Patent No. 6,535,505 to Johnson et al. ("Johnson"). Applicants respectfully traverse the rejection and provide the following arguments to support patentability.

The Office Action correctly acknowledges that Mueller, Lacey, and the G.992 Specification alone, or any combination thereof, does not teach or suggest at least the feature of *"deriving a set of favorable modes of operation from the set of possible modes of operation"* and *"in case there exist two or more favorable modes of operation, performing a probing-based selection by evaluating respective performances of each of the favorable modes of operation and selecting a favorable mode of operation with a best performance from among the set of favorable modes as the resultant mode of operation"* as recited by independent claim 1. (Office Action, p. 5.) To cure this deficiency, the Office Action alleges Johnson teaches or suggests these missing features such that a combination of Mueller, Lacey, the G.992 Specification, and Johnson renders independent claim 1 obvious. (Office Action, p. 5.) However as to be discussed below, Johnson does not teach or suggest these missing features of independent 1; therefore, the combination of Mueller, Lacey, the G.992 Specification, and Johnson does not render independent claim 1 obvious.

This Application discloses determining a resultant mode of operation for two modems from a set of possible modes of operation by narrowing down process. More specifically, the two modems, such as a central xDSL modem and a remote xDSL modem to provide an example, perform a handshaking procedure to exchange information about their respective capabilities to derive a set of common modes of operation. (Specification, p. 15, lines 5-13.) The "set of common modes of operation comprises all the protocol standards and annexes that are supported" by both of the modems. (Specification, p. 15, lines 13-15.) These common modes of operation, referred to as the set of possible modes of operation, can be used for data transmission between the two modems; however, this Application narrows down the possible modes of operation to derive a set of favorable modes of operation. (Specification, p. 15, line 27 - p. 16, line 7.) For example, this Application may discard possible modes of operation from the possible modes of operation that may be contrary to restrictions imposed by regulatory authorities. (Specification, p. 15, line 27 - p. 16, line 7.) Assuming that two or more favorable modes of operations exist, this Application then uses a probing based selection to further narrow down the set of favorable modes of operation to determine the resultant mode. (Specification, p. 16, lines 9 - p. 20, line 12.)

In contrast, the combination of Mueller and Johnson does not teach Applicants' narrowing down process before selection of the resultant mode of operation as recited by independent claim 1. Specifically, this combination does not teach or suggest at least the features of *"performing a handshake procedure to determine a set of possible modes of operation supported by the at least two modems"* and *"deriving a set of favorable modes*

of operation from the set of possible modes of operation" as recited by independent claim

1. *Assuming arguendo* that the mutual spectrum of Mueller discloses the "*set of possible modes of operation*" as recited by independent claim 1, the combination of Mueller and Johnson merely disclose selecting the "best" portion of the mutual spectrum. The Office Action lacks any teaching or suggestion that the mutual spectrum of Mueller is narrowed down into the communication paths of Johnson. Rather, Applicants believe that the mutual spectrum as disclosed by Mueller is the same as the communication paths as disclosed by Johnson.

Accordingly, Johnson does not teach or suggest at least the feature of "*deriving a set of favorable modes of operation from the set of possible modes of operation*" as recited by independent claim 1. Independent claim 24 recites substantially similar features that are likewise not taught or suggested by Johnson. Mueller, Lacey, and the G.992 Specification alone, or any combination thereof, does not provide the missing teachings or suggestions with respect to independent claims 1 and 24 nor does the Office Action so allege; therefore, the combination of Mueller, Lacey, the G.992 Specification, and Johnson does not render these independent claims obvious. Dependent claims 2-9, 11, 12, 25, and 27-30 are likewise not rendered obvious by the combination of Mueller, Lacey, the G.992 Specification, and Johnson for the same reasons as the independent claims from which they respectively depend and further in view of their own respective features. Accordingly, Applicants respectfully request that the rejection of claims 1-9, 11, 12, 24, 25, and 27-30 under 35 U.S.C. § 103(a) be reconsidered and withdrawn.

Claims 10, 13- 17, 19-21, 26, and 31-34

Claims 10, 13-17, 19-21, 26, and 31-34 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Mueller in view of Lacey, the G.992 Specification, and Johnson, and further in view one or more of the following:

United States Patent No. 6,396,531 to Gerszberg et al. ("Gerszberg");
United States Patent No. 7,027,405 to Khadavi et al. ("Khadavi"); and
United States Patent No. 7,391,780 to Stone et al. ("Stone").

Applicants respectfully traverse the rejection and provide the following arguments to support patentability.

As discussed above, the combination of Mueller, Lacey, the G.992 Specification, and Johnson does not teach or suggest each and every feature of independent claims 1 and 24. Khadavi, Stone, and Gerszberg alone or any combination thereof, does not provide the missing teachings or suggestions with respect to these independent claims nor does the Office Action so allege. Therefore, the combination of Mueller, Lacey, the G.992 Specification, and Johnson and one or more of Khadavi, Stone, and Gerszberg does not render independent claims 1 and 24 obvious. Dependent claims 10, 13-17, 19-21, 26, and 31-34 are likewise not rendered obvious by the combination of Mueller, Lacey, the G.992 Specification, and Johnson and one or more of Khadavi, Stone, and Gerszberg for the same reasons as the independent claims from which they respectively depend and further in view of their own respective features. Accordingly, Applicants respectfully request that the rejection of claims 10, 13-17, 19-21, 26, and 31-34 under 35 U.S.C. § 103(a) be reconsidered and withdrawn.

Allowable Subject Matter

Claim 18

Claim 18 stands objected to as allegedly being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. From the discussion above, Applicants have traversed the rejections to independent claim 1. Dependent claim 18 is likewise allowable for being dependent upon an allowable base claim and further in view of its own respective features. Accordingly, Applicants respectfully request that the objection of claim 18 be reconsidered and withdrawn.

Comments on Statement of Reasons for Allowance

Applicants note the Examiner's Statement of Reasons for Allowance presented on page 19 of the Office Action. Applicants reserve the right to demonstrate claim 18 is allowable over the art made of record for further reasons related to any of their recited features. Applicants further contend that reservation of this right does not give rise to any implication regarding whether the Applicants agree with or acquiesce in the reasoning provided by the Examiner.

Conclusion

All of the stated grounds of objection and rejection have been properly traversed, accommodated, or rendered moot. Applicants therefore respectfully request that the Examiner reconsider all presently outstanding objections and rejections and that they be withdrawn. Applicants believe that a full and complete reply has been made to the outstanding Office Action and, as such, the present application is in condition for allowance. If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided.

Prompt and favorable consideration of this Amendment and Reply is respectfully requested.

Respectfully submitted,

STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C.



Michael R. Malek
Attorney for Applicants
Registration No. 65,211

Date: 08/12/10

1100 New York Avenue, N.W.
Washington, D.C. 20005-3934
(202) 371-2600
1136531_1.DOC